SINGAPORE REPORTS

H.L.B. v. COMPTROLLER OF INCOME TAX, SINGAPORE

[C.A. (Wee Chong Jin C.J., Chua and Tan Ah Tah JJ.) March 7, 1975]
[Singapore — Civil Appeal No. 23 of 1974]

Income Tax — Assets accretion exercise — Claim of cash in hand — Amounts claimed for maintenance of children — Tax credits in respect of United Kingdom profits tax — Whether deduction can be allowed for bank charges — Double taxation agreement with United Kingdom — Income Tax Act (Cap. 141), ss. 14(1) and 50(3).

This was an appeal in respect of additional assessments raised against the appellant for the years of assessment 1956-1967 after an assets accretion exercise. The Board of Review had given credit for cash in hand and on the appeal it was argued that as the Board of Review had given credit for the cash in hand it must also accept the calculations on which the cash in hand were made. The other contentions on appeal related to (a) the amounts claimed by the appellant for the maintenance of his two children in India; (b) tax credits for United Kingdom profits tax and (c) bank charges in respect of United Kingdom dividends received by the appellant. An appeal to the High Court was dismissed and the appellant appealed to the Court of Appeal.

Held, dismissing the appeal: (1) there was no substance in the appellant's contention that because the Board of Review had accepted the cash in hand it must also accept the calculations on which the cash in hand were made and that these calculations must be correct;

(2) there was clear evidence to support the Board's order relating to the amounts claimed for the maintenance of the children in India and the High Court was correct in holding that all the available evidence was overwhelmingly in favour of the Board's decision;

(3) the giving of tax credits must be subject to the provisions of the Income Tax Act. On the facts it was clear that the Comptroller had credited the correct sum against the appellant's tax liability for the year of assessment 1966 and that the question of calculating any tax credits for profits tax did not arise at all;

(4) in this case as the United Kingdom dividends had been declared and the dividend warrants issued to the appellant, the bank charges were not incurred in the production of the income but were incurred for the purpose of making available to him for his use income which he had already earned and therefore he was not entitled to claim deduction for the bank charges.

COURT OF APPEAL.

L. A. J. Smith for the appellant.

Mrs. Hangchi (*Mahmood Fadjiar* with her) for the respondent.

Wee Chong Jin C.J. (delivering the judgment of the Court): This appeal arises out of additional assessments raised against the appellant taxpayer for the years of assessment 1956 to 1967 after what is commonly known as an assets accretion exercise. This exercise was carried out to determine the omitted income, if any, of the appellant. The appellant, a private medical practitioner, appealed to the Board of Review against the additional assessments so raised. He argued his appeal before the Board in person and himself gave evidence before the Board besides calling witnesses in support of his appeal. During the hearing the Comptroller was directed to submit a new assets accretion statement on the basis that the appellant had cash in hand for the years 1953 to 1966 as claimed by him and accordingly a new assets accretion statement was submitted by the Comptroller under which the total additional tax raised amounted to $11,966.74 instead of $15,291.32 under the original assets accretion statement.

The appellant was dissatisfied with the decision of the Board and appealed to the High Court contending that the Board, having given credit for his cash in hand, should have also accepted his calculations and his amounts for expenditure. The High Court held that the Board was under no obligation, on the evidence before it, to reach the conclusion that the cash in hand as claimed by the appellant were calculated cash in hand.

In the present appeal the appellant put forward a different contention namely, that the High Court had misunderstood the Board's finding — that while the Board had in fact held that the cash in hand were calculated sums, the High Court had held that the Board's decision was otherwise. We found no substance in this contention. Nowhere in the Record or in the Board's grounds of decision was it stated that the Board had accepted the amounts of cash in hand as calculated sums and it is apparent that what the Board did accept and find only was that the appellant did keep cash in hand. Indeed the Board subsequently rejected the amounts claimed by the appellant as his daily expenses and this is a clear indication that the Board rejected the appellant's calculations of his cash in hand which calculations were based on the expenses he claimed. We also found no substance in the appellant's contention that because the Board had accepted the cash in hand then it must also accept the calculations on which the cash in hand were made and that these calculations must necessarily be correct. It need hardly be observed that one could arrive at the same figures for cash in hand by different sets of computations.

In the Petition of Appeal to this court the appellant raised contentions relating to the amounts claimed by him for the maintenance of his two children living in India. These contentions were not elaborated at the hearing of the appeal but nevertheless after hearing counsel for the respondent we were of the opinion that there was no substance in these contentions. We were satisfied that there was clear evidence to support the Board's order and that the High Court was correct in its view that "all the available evidence was overwhelmingly in favour of the Board's decision...".

The other main contentions raised in the Petition of Appeal to this court relate to the Comptroller's treatment of (a) tax credits for United Kingdom profits tax and (b) bank charges in respect of United Kingdom dividends received by the appellant in the year 1963. Here again the contentions were not elaborated at the hearing of the appeal. The points raised involved consideration of the system of taxation in the United Kingdom on profits and a consideration of the Avoidance of Double Taxation Agreement between Singapore and the United Kingdom. We had the benefit of a clear and concise rebuttal by counsel for the respondent on these two points.

On the question of tax credits in respect of United Kingdom profits tax we agreed with the respondent's counsel that the appellant is under a misconception as to the tax credits he is entitled to against Singapore tax in respect of dividends he received from the United Kingdom. Under Article 18(2)(a) of the Avoidance of Double Taxation Agreement the giving of tax credits must be subject to the provisions of our Income Tax Act. Section 50(3) of our Act deals with such tax credits and on the facts it was clear that the Comptroller had credited the correct sum against the appellant's tax liability for the year of assessment 1966 and that the question of calculating any tax credits for profits tax did not arise at all. The appellant was unable to show how he arrived at the sum of $27.25 which he claimed should have been credited against his tax liability in respect of United Kingdom profits tax.

On the question of bank charges the appellant's argument was that he is entitled to a deduction of the bank charges incurred by him in respect of his receipt in Singapore of his United Kingdom dividends. The test is, in the words of section 14(1) of the Income Tax Act, whether the expense is "wholly and exclusively incurred . . . in the production of the income . . . ". In the appellant's case the United Kingdom dividends having been declared and the dividend warrants issued to him the bank charges were clearly not incurred in the production of the income but were incurred by him for the purpose of making available to him for his use income which he had already earned and for that reason we also found no substance in that ground of appeal.

Accordingly and for all these reasons we dismissed the appeal at the conclusion of the hearing.

Appeal dismissed.

Solicitors: *L. A. J. Smith.*

VIJAYAN v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Choor Singh and Tan Ah Tah JJ.) May 7, 1975]

[Singapore — Criminal Appeal No. 17 of 1974]

Criminal Law and Procedure — Charge of murder — Defence of grave and sudden provocation — Whether defence applicable to facts of case — Act provoked must have some reasonable relationship to the provocative act — Penal Code, s. 300, Exception 1.

Penal Code, s. 300, Exception 1 — Murder — "Grave" and "sudden" provocation.

In this case, the appellant had been convicted of murder. The only ground of appeal relied on was that the trial judges were wrong in law in finding that the defence of grave and sudden provocation could have no application to the facts of the present case.

Held, dismissing the appeal: (1) where an accused person charged with murder relies on provocation and claims the benefit of Exception 1 to section 300 of the Penal Code, the test to be applied is, whether the act or acts alleged to constitute provocation have deprived a reasonable man of his self-control and induced him to do the act which caused the death of the deceased and in applying this test it is relevant to look at and compare the act of provocation with the act of retaliation;

(2) on the evidence in this case the trial judges came to a correct finding. The provocative acts relied upon in this case were not capable of constituting provocation sufficient to reduce the appellant's crime from murder to culpable homicide not amounting to murder.

Cases referred to:-

(1) *Attorney-General for Ceylon* v. *Perera* [1953] A.C. 200.

(2) *Mancini* v. *Director of Public Prosecutions* [1942] A.C. 1.

(3) *Holmes* v. *Director of Public Prosecutions* [1946] A.C. 588.

(4) *Lee Chun-Chuen* v. *The Queen* [1963] A.C. 220.

(5) *Nanavati* v. *State of Maharashtra* A.I.R. 1962 S.C. 605.

(6) *R.* v. *Duffy* [1949] 1 All E.R. 932.

(7) *Jayasena* v. *Regina* [1970] 1 All E.R. 219.

(8) *Phillips* v. *The Queen* [1969] 2 A.C. 130.

(9) *Reg.* v. *Brown* [1972] 3 W.L.R. 12.

(10) *Reg.* v. *Walker* [1969] 1 W.L.R. 311.

COURT OF CRIMINAL APPEAL.

Datuk David Marshall for the appellant.

Tan Teow Yeow (Deputy Public Prosecutor) for the respondent.

Choor Singh J. (delivering the judgment of the Court): The appellant was convicted before the High Court consisting of two judges for the murder of a man named Murthi. We dismissed his appeal against his conviction and now proceed to give our reasons.

The only ground of appeal relied on by counsel for the appellant, accepting the trial judges were correct in accepting the evidence of an eye-witness, Subramaniam by name and in rejecting the evidence of the appellant, was that the trial judges were wrong in law in finding that the defence of grave and sudden provocation (Exception 1 to section 300 of the Penal Code) could have no application to the facts of the present case.

The appellant is a Malaysian who came to Singapore some time back on a social visit. Permission to enter Singapore on a social visit is granted by the Immigration authorities by endorsement on one's passport and is valid for only 14 days. It would appear that the appellant had contrived to remain in Singapore ever since he first came by going across the border between Singapore and Malaysia every 14 days and coming back on the same day with a fresh endorsement valid for another 14 days. A person such as the appellant who is in Singapore on a social visit is not entitled to work in Singapore without a work permit. The appellant has no such permit but has nevertheless been working in Singapore as a labourer. The relevance of these facts will appear when the issue of provocation is considered.

Subramaniam, a close friend of the deceased, gave evidence that a few days before the deceased was killed he enlisted the help of the deceased to bring about a settlement of whatever disputes there were between his two room-mates and a person named Velu, a friend of the appellant. The parties to the dispute were brought together in the presence of the deceased and "his boys" on the one hand and the appellant on the other. The appellant was apparently dissatisfied with the manner in which the settlement had been negotiated and